UNITED STATES
V.
L. B. McGUIRE

IBLA 70-523 Decided February 4, 1972

Appeal from decision (Colorado Contest 385) by John R. Rampton Jr., Departmental hearing examiner, holding mining claims null and void.

Affirmed.

Administrative Procedure Act: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Discovery: Generally -- Rules of Practice: Evidence

> In a government mining contest, where the contestant had made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit the government's witness.

Administrative Procedure Act: Burden of Proof -- Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

> Government mineral examiners in determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

Mining Claims: Contests -- Rules of Practice: Evidence

> Testimony by a government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the government of lack of discovery.

Mining Claims: Discovery: Generally -- Mining Claims: Lode Claims

> To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a lode or vein bearing mineral in such quality and quantity which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Mining Claims: Contests

> The fact that the complaint in a mining contest described the claim as being in the wrong range does not vitiate a decision holding the claim null and void where there was no confusion as to the land involved, the contestee and the mineral examiner had been on the claim together, and there is no showing of prejudice to the contestee.

APPEARANCES: Richard B. Manges for appellant.

OPINION BY MR. RITVO

This is an appeal by L. B. McGuire from a decision dated February 2 1970, whereby a Departmental hearing examiner held McGuire's mining claim null and void for lack of discovery of a valuable mineral deposit.

The facts which were discussed in the hearing examiner's opinion, 1/ are not in dispute. Appellant contends on appeal, first, that the government examiner sampled from the exposed edge of the discovery shaft, rather than the vein or lode itself, which had previously been sampled and assayed to be of value; therefore, his testimony should not have been admitted into evidence. Second, he argues that the complaint did not specifically describe the claim in question and should have been dismissed for insufficiency. The caption of the complaint described the land as being in "R. 85" whereas it is in "R. 75".

We have reviewed the entire record and carefully considered the decision of the hearing examiner and find that his discussion and conclusions of the law are correct and hereby adopt his decision. 2/

We add the following:

1/ Hearing Examiner's opinion appended hereto, Appendix A.
2/ See attached Appendix A.

With respect to appellant's first contention, the government made a prima facie showing of lack of discovery of a valuable mineral deposit with the testimony of the mineral examiner. The appellant's allegation that the mineral examiner's testimony is opinion evidence which was improperly admitted is without merit. Udall v. Snyder, 405 F.2d 1179 (10th Cir. 1968), cert. denied 396 U.S. 819 (1969); United States v. A. P. Jones, 2 IBLA 140 (1971).

It should be emphasized that the government mineral examiner was not required to perform discovery work for the appellant or to sample beyond the claimant's workings. Neither was he required to rehabilitate the alleged discovery of appellant. United States v. Jimmie (Juanita) P. Laing, 3 IBLA 108 (August 19, 1971). A working which appellant said was a shaft 16 feet deep was filled with debris which he did not volunteer to remove when the mineral examiner inspected the claim. The record shows McGuire was in agreement as to where the mineral examiner should sample during the examination of the claim.

As to appellant's second contention, the record shows that the incorrect description was a typographical error.

Appellant made the same error in his answer. Furthermore, paragraph 3 of the complaint stated that the mining claim involved lands described in the mining location certificate recorded on September 12, 1955, at page 216 of Book 1002 in the office of the Larimer County Clerk and Recorder. In his answer, McGuire admitted the allegations of this paragraph. The certificate, a copy which was recorded as Exhibit A at the hearing, described the land properly.

At the hearing, the hearing examiner amended the complaint and other papers to show the correct range.

The parties were in agreement as to what land was in question and had been on the land together prior to the hearing. Appellant has not shown he was prejudiced in any way because of the error.

In such circumstances the mistaken description would not justify setting aside the decision. United States v. J. R. Osborne, 77 I.D. 83, 96 (1970); United States v. Harold Ladd Pierce, 75 I.D. 270, 275-276 (1968); United States v. Neil Stewart et al., 1 IBLA 161 (1970); cf. Harold Ladd Pierce, 3 IBLA 29 (1971). Hence, we find this argument to be without merit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the hearing examiner is affirmed.

Martin Ritvo, Member

We concur:

Joan B. Thompson, Member

Edward W. Stuebing, Member

APPENDIX A

February 2, 1970

DECISION

UNITED STATES of AMERICA, (Acting through the Forest Service, Department of Agriculture), Contestant	: COLORADO 385 : : Involving the Three Rivers : in Section 10, T. 8 N.,
v.	: R. 75 W., 6th P.M. (within : the Roosevelt National
L. B. McGUIRE, Contestee	: Forest), Larimer County, : Colorado.

MINING CLAIM DECLARED VOID

At the request of the Forest Service, United States Department of Agriculture, the Manager of the Land Office, Bureau of Land Management, issued a complaint dated July 21, 1965, against the Three Rivers lode mining claim alleging that:

(a) No discovery of rock in place bearing valuable deposits of minerals as required by law has been made upon or within the claim.

(b) The lands within the limits of the claim are nonmineral in character.

The Contestee filed a timely answer denying the allegations.

A hearing was held on May 7, 1969, at Fort Collins, Colorado. The Contestant was represented by Mr. Rogers N. Robinson, Office of the General Counsel, U.S. Department of Agriculture, Denver, Colorado. Mr. Alden T. Hill, Attorney at Law, Fort Colins, Colorado, appeared on behalf of the Contestee.

From the evidence presented at the hearing, I hereby make the following:

Findings of Fact and Conclusions of Law

The Three Rivers lode mining claim was located on August 27, 1955, by L. B. McGuire. The claim is a relocation of the Three Rivers lode mining claim which was originally located by F. W. McGuire, the brother of the present locator, on May 1, 1934.

The only overt improvement on the claim is a cabin. The Contestee maintains that there are two points of discovery -- one is an exposure of granite gneiss, about 150 to 200 feet northwest of the cabin where drainage from a spring cascades over the face of the granite ledge, and the other is an old working situated 50 to 60 feet east of the cabin. It is at the old working east of the cabin that the Contestee testified to a shaft having been sunk to a depth of about 16 feet. The shaft is now filled with debris, consisting of fragments of wood, tin cans and dirt, leaving only a small depression at the point of the old working and there is no evidence as to the type of rock or formation that formerly had been exposed.

Mr. Robert G. Gnam, a geologist employed by the Forest Service, first visited the claim on October 3, 1964. He was accompanied by Mr. L. B. McGuire and various members of Mr. McGuire's family. Mr. Gnam took a sample from both of the points of discovery described above. The first sample was taken by chipping across a 2-1/2 foot width of the exposed ledge. The second, a chip sample, was taken from the overhanging rock at the old filled-in shaft. Mr. Gnam also used a scintillometer to detect radioactive mineralization but no abnormal readings were noted.

The two samples were assayed for gold, silver, zinc, tungstic oxide and uranium oxide. The results of the assays showed traces of gold, silver and zinc, and less than .01 percent tungstic oxide. The first sample assayed .003 percent uranium oxide and the second assayed .004 percent.

Mr. Gnam again visited the claim on May 20, 1967 and September 20, 1969, but found no new work had been performed.

Based upon his examinations and upon the assays of the samples taken, Mr. Gnam is of the opinion that a reasonably prudent man would not be justified in spending further time and effort upon the claim in a hope of finding a paying mine. He based his opinion on the fact that no structure, vein system, fault or intrusive body was exposed that might carry valuable mineral deposits, and that the samples taken showed only traces of gold, silver and zinc. Trace amounts of these minerals can be found in the country rock throughout the Rocky Mountains. Also, the uranium oxide reported is so small that further prospecting for this mineral would not be warranted.

The evidence presented by the Contestee consisted, in the main, of an assay dated June 13, 1934 (Claimant's Ex. B), showing the results of an assay of a sample taken by Mr. F. W. McGuire, the original locator. Contestee McGuire was present when the sample was taken, but he did not participate in the sampling. He said that the shaft at the point where the sample was taken was approximately 10 feet deep. The assay results of the 1934 sampling showed gold, .50 ounces, valued at $21 per ton, and silver, 40 ounces, valued at 26 cents per ton. 1/

Mr. McGuire testified that he has had no experience in mining, that he relocated the claim after his brother had moved to California, and that he had not done any prospecting in the last five years. He said the cabin on the claim had been used mainly for weekend excursions as a hunting and fishing cabin and that the debris in the old shaft had been placed there by his relatives who had used the cabin.

Mr. Thorwald H. Sackett, a man who has considerable experience in mining, including experience as a sampler for a mine in Telluride, Colorado, testified that he was personally acquainted with the assayer who made the 1934 assay and that the man had a good reputation. Mr. Sackett had not examined the claim in issue so he could not testify as to the mineralization. When asked if, in his opinion, an assay report of a sample which showed $21 in gold would be evidence of a discovery,

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1/ Silver was computed at 64-1/8 cents per ounce.

he replied (Tr. 108): "The sample wouldn't mean too much unless you could see the deposit from which it was taken and the manner in which the sample was taken." He then went on to say that, assuming it was a fair representation of the ore exposed, you would still want to know what kind of a deposit the sample came from, whether there was ore of the same material and the cost of mining, before a determination could be made as to whether a mining proposition would be feasible.

The law applicable to the issues in this case is clear. When the Government contests the validity of a mining claim, it bears the burden of going forward with sufficient evidence to establish a prima facie case. The burden is then upon the mining claimant to show by a preponderance of the evidence that his claim is valid. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

One of the essential elements in the location of a valid mining claim is the discovery within the limits of the claim of a mineral or minerals sufficient to justify a prudent man in the further expenditure of his time and money in an effort to develop a paying mine. Castle v. Womble, 19 L.D. 455 (1894); Chrisman v. Miller, 197 U.S. 313 (1905); Cameron v. United States, 252 U.S. 450 (1920). This rule, called the "prudent man" test, has been followed by the Department to be the proper measure of a "discovery," as that term is used in the mining laws of the United States (30 U.S.C. 23 (1964)). It was most recently affirmed as a proper standard by the Supreme Court in United States v. Coleman, 390 U.S. 599 (1968).

The evidence presented by the Contestant establishes a clear albeit rebuttal case that no discovery has been made upon the claim. Mr. Gnam testified that he found no structure or vein system, fault or intrusive body that might carry valuable mineral deposits. That such a structure be exposed is a prerequisite to the location of a lode mining claim. In Jefferson-Montana Copper Mines Co., 41 L.D. 320 (1912), the Department outlined the elements necessary to establish a valid discovery on a lode mining claim as follows:

1. There must be a vein or lode of quartz or other rock in place;

2. The quartz or other rock in place must carry gold or some other valuable mineral deposit;

3. The two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine.

In the present case, then, the unrebutted testimony is that there was not exposed on the claim even the first element of a discovery, i.e., a vein or lode of quartz or other rock in place. Further, in the exposure of rock at the claimed points of discovery there were no significant mineralizations shown to be present by the assays of the samples taken by Contestant's representative.

The evidence presented by the Contestee does not rebut Contestant's evidence. In measure, it strengthens it. The assay certificate of the sample taken in 1934, standing alone and without adequate explanation, is meaningless. It cannot be determined whether the sample was representative or whether the sample came from a vein or a fault structure. There is simply no evidence on how the sample was taken sufficient to allow any weight to be given to the evidence of mineralization shown by the assay certificate. Illustrative of this is the testimony given by Mr. Sackett when he stated that the sample was not meaningful unless one could observe the deposit from which it was taken and knew the manner in which it was taken.

Further, it is the duty of a mining claimant to maintain discovery points in such condition that they are open and available for inspection so that the Government may confirm the existence of a discovery. United States v. Lem A. and Elizabeth D. Houston, 66 I.D. 161 (1959). The Government has neither the obligation nor the responsibility to go beyond discovery points designated by the claimant to search or explore for minerals beyond the existing workings on the claim. United States v. Jesse Edwards, A-28145 (January 20, 1960); United States v. George J. Patee et al., A-28731 (May 7, 1962). The discovery shaft was covered and not subject to inspection.

The allegations of the complaint have been sustained. Accordingly, the Three Rivers lode mining claim is hereby declared to be void.

This decision becomes final 30 days from its receipt unless an appeal to the Director, Bureau of Land Management, is filed with the Office of Hearing Examiners, Salt Lake City, Utah. Appeals must be in strict compliance with the regulations in 43 CFR, Part 1840, a copy of which, issued as Circular 2137, is attached. A summary of information on filing appeals with the Director (Form 1842-1) is also attached.

If an appeal is taken by the Contestee, the amount of the filing fee will be $5, and the adverse party to be notified is

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John R. Rampton, Jr.
Hearing Examiner

Enclosure

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